

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIE TATUM,

No. C-10-844 TEH (PR)

Petitioner,

No. C-10-4419 TEH (PR)

v.

ORDER DENYING PETITIONS FOR
WRIT OF HABEAS CORPUS; DENYING
CERTIFICATES OF APPEALABILITY

RANDY GROUNDS, Warden,

Respondent.

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Petitioner filed two pro se petitions for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which he claimed that two separate decisions by the Board of Parole Hearings finding him not suitable for parole in 2008 and 2009 violated his right to due process because they were not supported by sufficient evidence. See Tatum v. Grounds, No. 10-844-TEH (PR) (N. D. Cal. filed Feb. 26, 2010); Tatum v. Grounds, No. 10-4419-TEH (PR) (N. D. Cal. filed Sept. 30, 2010). Both matters have been briefed fully and stand submitted, ready for decision.

The United States Supreme Court recently made clear that in the context of a federal habeas challenge to the denial of

1 parole, a prisoner subject to a parole statute similar to
2 California's receives adequate process when BPH allows him an
3 opportunity to be heard and provides him with a statement of the
4 reasons why parole was denied. Swarthout v. Cooke, 131 S.Ct. 859,
5 862-63 (2011) (per curiam). Here, the record in both actions shows
6 Petitioner received at least this amount of process. The
7 Constitution does not require more. Swarthout, 131 S.Ct at 862.

8 The Court also made clear that whether BPH's decision was
9 supported by some evidence of current dangerousness is irrelevant in
10 federal habeas: "it is no federal concern . . . whether
11 California's 'some evidence' rule of judicial review (a procedure
12 beyond what the Constitution demands) was correctly applied."
13 Swarthout, 131 S.Ct at 863. Accordingly, the instant federal
14 petitions for writ of habeas corpus are DENIED.

15 Further, as to both actions, Certificates of Appealability
16 are DENIED. See Rule 11(a) of the Rules Governing Section 2254
17 Cases. Petitioner has not made "a substantial showing of the denial
18 of a constitutional right." 28 U.S.C. § 2253(c)(2). Nor has
19 Petitioner demonstrated that "reasonable jurists would find the
20 district court's assessment of the constitutional claims debatable
21 or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Petitioner
22 may not appeal the denial of a Certificate of Appealability in this
23 Court but may seek a certificate from the Court of Appeals under
24 Rule 22 of the Federal Rules of Appellate Procedure. See Rule 11(a)
25 of the Rules Governing Section 2254 Cases.


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1 The Clerk shall terminate any pending motions as moot,
2 enter judgment in favor of Respondent and close the files.

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4 IT IS SO ORDERED.

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6 DATED 03/04/2011



THELTON E. HENDERSON
United States District Judge

United States District Court
For the Northern District of California

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